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11 **FILED
ALAMEDA COUNTY**

12 FEB 22 2018

13 CLERK OF THE SUPERIOR COURT
14 By *[Signature]* DEPUTY

15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF ALAMEDA

17 EUSTOLIA VILLASEÑOR;

18 Case No. RG188923009

19 Plaintiff,

20 vs.
21 [FIRST AMENDED]
22 UNVERIFIED COMPLAINT FOR
23 DAMAGES

24 TESLA, INC.; and DOES 1 to 100,
25 inclusive

26 [REQUEST FOR JURY TRIAL]

27 Defendants.

The following is a complaint for Personal Injury brought by EUSTOLIA VILLASEÑOR, by and through her attorneys The Arns Law Firm, who allege on information and belief as follows:

PARTIES

1. Plaintiff EUSTOLIA VILLASEÑOR is a resident of the State of California.
 2. Defendant TESLA, INC. is a California corporation whose principal place of business is 45500 Fremont Blvd in Fremont, California and is in the business of manufacturing automobiles in the State of California.
 3. The true names and capacities of Defendants sued in the Complaint under the fictitious names of Does 1 through 100, inclusive, are unknown to Plaintiff who therefore brings suit against such Defendants by such fictitious names.
 4. All the Defendants described above shall collectively be referred to as "Defendants" in this complaint.
 5. Whenever reference is made in this complaint to any act of Defendants, such allegation shall mean that each Defendant acted individually and jointly with the other Defendants named in that cause of action.
 6. Whenever reference is made in this complaint to any act of any corporate or other business Defendant, such allegation shall mean that such corporation or other business did the acts alleged in the complaint through its officers, directors, employees, agents and/or representatives while they were acting within the actual or ostensible scope of their authority.
 7. At all relevant times, each of the Defendants has acted as an agent, representative, or employee of each of the other Defendants and has acted within the course and scope of said agency or representation or employment with respect to the causes of action in this complaint.
 8. At all relevant times, each Defendant has committed the acts, caused others to commit the acts, or permitted others to commit the acts referred to in this complaint.

1 **VENUE**

2 9. Venue in this action is proper in the County of Alameda based upon the fact
3 that the injury suffered by Plaintiff herein occurred and one or more Defendant resides
4 within the county of Alameda.

5 **FACTUAL ALLEGATIONS**

6 10. On or about April 25, 2017, Plaintiff EUSTOLIA VILLASEÑOR was acting
7 within the course and scope of her employment as a welder with her employer C M F
8 Group Machinery Installation. Plaintiff was working at the Tesla Factory project (the
9 “subject project”) in Fremont, California.

10 11. On or about April 25, 2017, TESLA, INC. was the owner of the premises
11 where the subject project was underway and was the entity on the subject project that was
12 directing the work of Plaintiff’s employer.

13 **FIRST CAUSE OF ACTION**

14 NEGLIGENCE

15 12. Plaintiff realleges and incorporates by reference paragraphs 1 through 11
16 inclusive as if fully set forth herein.

17 13. That at said time and place, as aforesaid, the Defendants, and each of them,
18 owed a duty of reasonable care to Plaintiff and others based upon Defendants’ work
19 performed on the subject premises where the injury-causing incident occurred. Said duty
20 was based upon Defendants’ contractual obligations, custom and practice in the industry,
21 right to control the details of the work, exercise of control over the details of the work,
22 authority to control the details of the work, the coordination of the details of the work,
23 and the commission of affirmative acts that resulted in said injury to Plaintiff.

24 14. Additionally, said duty is based on the requirements of Civil Code § 1714
25 requiring all persons to act in a reasonable manner toward others.

26 15. Additionally, said duty is based on the requirement of Defendants, and each
27 of them, to provide a safe place for EUSTOLIA VILLASEÑOR to work pursuant to
28 Labor Code § 6400.

1 16. Defendants, and each of them breached said duty by negligently, carelessly
2 and recklessly constructing, inspecting, maintaining, contracting, subcontracting,
3 supervising, controlling, engineering, designing, performing, planning and holding out
4 for bid, construction work and supplying men and materials for the Tesla Factory project,
5 in that Defendants placed an upward-pointing bolt in the floor of the welding work area
6 while welders, including Plaintiff, worked in the work area, thereby creating a hazardous
7 condition. Defendants failed to remove the bolt, guard it, cover it, or otherwise safeguard
8 against the bolt creating a tripping hazard in a safe and proper manner, thereby creating a
9 risk of injury to persons working on said job site.

10 17. Defendants, and each of them, negligently operated, controlled, and directed
11 work in a manner that was hazardous and exposed Plaintiff and other workers to risk of
12 injury on the subject project.

13 18. That at said time and place, as aforementioned, Defendants and each of them
14 were employers on multi-employer worksites pursuant to Labor Code §§ 6400, 6401,
15 6402, 6403, 6404 as defendants, and each of them, created the subject dangerous
16 condition, had the authority to correct the subject dangerous condition, were aware of the
17 subject dangerous condition, or were responsible for remedying the subject dangerous
18 condition to which EUSTOLIA VILLASEÑOR was exposed.

19 19. That at said time and place, EUSTOLIA VILLASEÑOR was within the class
20 of workers who were intended to be protected by the Labor Code regulations and
21 protected under the dictates of the regulations articulated in the California Code of
22 Regulations, Title 8 ("Cal-OSHA").

23 20. Defendants, and each of them, breached said duty by negligently violating the
24 dictates of Labor Code § 6400 et seq. by failing to provide EUSTOLIA VILLASEÑOR
25 a safe place to work.

26 21. Further, Defendants, and each of them violated various Labor Code provisions
27 for safety, as well as Cal-OSHA or other ordinance enacted to protect the class of
28 plaintiffs here involved from the type of injury here incurred. As a direct and proximate

1 result of said violation EUSTOLIA VILLASEÑOR sustained injury to his person,
2 damage to her property, incurred wage loss, medical expenses, and other expenses.

3 22. Such code sections and regulations, include, but are not limited to Labor Code
4 §§ 6400, 6401, 6402, 6403, 6404, as well as the specific provisions of Cal-OSHA that
5 include, but are not limited to §§ 1513(c), 3272, 3273(a).

6 23. Defendants had a duty under the Labor Code to assure compliance with the
7 aforementioned codes and regulations occurring at a multi-employer worksite.
8 Defendants failed to comply with their specific statutory duty in this regard, and as such
9 may be found negligent *per se* regarding the happening of this incident, as well as liable
10 under common law concepts of negligence.

11 24. Defendants affirmatively contributed to this incident by negligently operating,
12 controlling, and directing work relating to work in the welding area in a manner that was
13 hazardous and exposed plaintiff and other workers to the risk of injury on the subject
14 project.

15 25. As a direct and proximate cause of this negligence, EUSTOLIA
16 VILLASEÑOR was caused severe harm, including a fractured right arm, when
17 Defendants placed an upward-pointing bolt in the floor of the welding work area while
18 welders, including Plaintiff, worked in the work area, then failed to remove the bolt, guard
19 it, cover it, or otherwise safeguard against the bolt creating a hazardous condition, causing
20 Plaintiff to trip and fall.

SECOND CAUSE OF ACTION

PREMISES LIABILITY

23 26. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 25
24 inclusive as if fully set forth herein.

25 27. That at said time and place, as aforesaid, Defendants, and each of them, owed
26 a duty of reasonable care toward Plaintiff and others based upon Defendants' ownership,
27 the contractual language of the lease, the possession, and operation of the subject premises
28 where the injury causing event occurred. Said duty was based upon Defendants'

1 contractual obligations, custom and practice in the industry, right to control the premises,
2 exercise of control over the details of the premises, authority to control the premises, the
3 coordination of the activities occurring on the premises, and the commission of
4 affirmative acts that resulted in said injury to plaintiff.

5 28. Additionally, said duty is based on the requirements of Civil Code §1714
6 requiring all persons to act in a reasonable manner toward others.

7 29. Defendants breached said duty by negligently, carelessly and recklessly
8 inspecting, maintaining, contracting, subcontracting, supervising, controlling
9 engineering, designing, performing, and planning of the activities at the Tesla Factory
10 project in that Defendants failed to maintain the site and its premises in a reasonably safe
11 and proper manner, failing to properly maintain safe areas free of hazardous conditions.

12 30. Defendants were negligent for failure to perform adequate safety inspection
13 of the subject area, as required by law, at any time.

14 31. Defendants were negligent for failure to perform adequate evaluation of the
15 subject premises for defects or safety issues at any time.

16 32. Defendants were negligent in that they knew or should have known of the
17 injury-causing hazardous condition on its premises at the time of or before the occurrence
18 of the subject incident, yet Defendants failed to take action to correct or abate the
19 hazardous condition or warn Plaintiff of the existence of the hazardous condition.

20 33. As a direct and legal result of the conduct set forth above by Defendants, and
21 each of them, while Plaintiff was walking through an area of the project controlled by
22 **Defendants** when her foot struck an upward-pointing bolt in the floor that
23 **Defendants placed in the floor then failed to remove, guard, cover, or otherwise**
24 **safeguard against creating a hazardous condition. Plaintiff was caused to fall,**
25 **resulting in injuries to her right arm standing on the premises of the San Francisco**
26 **Naval Yard Project a wooden beam was caused to fall on from an upright unsupported**
27 **position onto Plaintiffs head and upper body.**

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1 34. As a direct and proximate cause of this negligence, EUSTOLIA
2 VILLASEÑOR was caused severe harm, including a fractured right arm, when
3 Defendants placed an upward-pointing bolt in the floor of the welding work area while
4 welders, including Plaintiff, worked in the work area, then failed to remove the bolt, guard
5 it, cover it, or otherwise safeguard against the bolt creating a hazardous condition, causing
6 Plaintiff to trip and fall.

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1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
2 them, as follows:

- 3 1. Plaintiff requests repayment of all special damages incurred, according to
4 proof, including, but not limited to all past and future wage loss, hospital and medical
5 expenses.
- 6 2. Plaintiff requests all general damages according to proof.
- 7 3. For all prejudgment interest as allowed by law.
- 8 4. For all attorneys fees as allowed by law.
- 9 5. For costs of suit incurred herein.
- 10 6. For such other and further relief as the Court deems just and proper.
- 11 7. For a jury trial on all issues allowed by law.

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13 DATED: February 21, 2018

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15 THE ARNS LAW FIRM
16 By: JONATHAN E. DAVIS
17 Attorneys for Plaintiff
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